U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship
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Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 13 2007
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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Laura Dadick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a logistic specialist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner[1] submits a statement. For the reasons discussed below, we withdraw the director's adverse findings.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
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> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's in Business Administration (MBA) from Thunderbird, the American Graduate School of International Management in Arizona. The petitioner's occupation falls within the

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[1] Although the record contains a Form G-28 from [redacted] the form indicates that [redacted] represents the petitioner in connection with the petitioner's Form I-485 only. [redacted] has not submitted a Form G-28 indicating that he represents the petitioner for purposes of his Form I-140 or on appeal. The petitioner filed the Form I-140 and the instant appeal on his own behalf with no representation. Accordingly, we consider the petitioner to be self-represented in this matter.

pertinent regulatory definition of a profession.[2] The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

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[2] The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as follows:

> [O]ne of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The Department of Labor's Occupational Outlook Handbook 662 (2006) suggests that "logisticians" should have at least a baccalaureate degree.

We concur with the director that the petitioner works in an area of intrinsic merit, logistics. The director then concluded that the proposed benefits of the petitioner's work, increased efficiency in exporting goods, especially cars and automotive parts, would benefit only the petitioner's employer, [redacted] and its client, General Motors. The director noted statements by the Vice President of [redacted] asserting that the petitioner's system was a company trade secret. Thus, the director concluded that the proposed benefits would not be national in scope.

On appeal, the petitioner asserts that protecting the system as a trade secret does not prevent other companies from utilizing the system, noting that Microsoft protects its operating systems while allowing their use. The petitioner further asserts that it is only relevant whether the petitioner developed the system and whether it has been adopted, not who controls the intellectual property aspects of it.

As acknowledged by the director, [redacted] asserts that [redacted] "will negotiate with Chrysler and Ford to provide similar cost savings and increases in efficiency when [sic] we have done for GM." [redacted] does not indicate that Chrysler or Ford has expressed any interest in such negotiations and the record contains no letters from anyone at these companies. Nevertheless, the petitioner's systems would appear to reach beyond [redacted] and General Motors. [redacted] Senior Commercial Manager and General Manager of Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc., attests to GM's improved use of cargo space since the implementation of the petitioner's program and expresses the hope that Chrysler and Ford will adopt a similar system. [redacted] Chief Executive Officer of NFM Import & Export Company asserts that he invited the petitioner to visit NFM after listening to the petitioner speak at a conference. [redacted] asserts that the petitioner's investigation and subsequent logistics advice has the potential to save NFM significant amounts of money. [redacted], head of logistics projects for GM International Logistics at Pasha Group, implies that Pasha Group's customers include Bentley, Lotus and Honda and asserts that the petitioner's system increases work efficiency by 60 percent and reduces costs by 30 percent. Finally, based on his work with the automotive industry, the petitioner was invited to speak at the 9th Annual International Lumber Conference held in Beijing, China.

In light of the above, the proposed benefits of the petitioner's work are not limited to [redacted] and General Motors, but can be considered national in scope.

We must now consider whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent or a trade secret, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

[redacted] explains that automotive shipping companies charge by reservation rather than actual space used. Thus, accurate forecasts and reservations are vital for the exporter. In an interview available at www.universallogistics.net, a copy of which the petitioner submitted, [redacted], Senior Director of International Logistics at General Motors, explains that every vehicle shipped requires five documents, too many to handle manually as export volume increases. [redacted] also notes the high storage costs and overseas interest charges incurred if a car arrives at the wrong time and is not timely shipped.

[redacted] explains that the petitioner developed the AS400 Vehicle System, which integrates the communication between the different parties involved in the logistics chain, including overseas car dealers, port processors, ocean carriers, airlines, government agencies, customs agencies and the Chamber of Commerce. The system handles processes that were previously handled by facsimile and telephone.

[redacted] Regional Manager at General Motors, asserts that the AS400 Vehicle System is the result of the petitioner's logistics expertise and IBM's iSeries technology. [redacted] concludes that as a result of this system, the more General Motors exports, the more money it saves. [redacted] and several other references at General Motors all affirm that the petitioner's system saves General Motors 50 percent in logistics costs per vehicle. [redacted] confirms that due to the AS400 Vehicle System, General Motors has increased its market share in Europe by 2.3 percent.

In addition, [redacted] explains in his letter:

> Due to the high tariffs in China, local assembly is much cheaper for us, but it creates great burdens on the logistics chain, because all parts must arrive, and must arrive at the right time; the work of one single vehicle export is now equivalent to that of thousands of vehicles exported in the other projects as each part involves at least four individual transactions among all the parties. Without the automated support of the AS400 Vehicle System, we would not have been able to handle these requirements.

[redacted] confirms that the petitioner's system has resulted in General Motors increasing its market share in China by 18.9 percent. [redacted], General Manager of the International Production Center of General Motors, China, asserts that they are "currently extending the

application of [the petitioner's] system to all our domestic transportations." Finally, on April 14, 2005, The Chartered Institute of Logistics and Transport in China issued the Award for Manufacturing Logistics to the petitioner in recognition of the AS400 Vehicle System.

In light of the above, the petitioner has not only demonstrated that he is the developer of an innovation, but that the innovation is widely adopted by a major automotive company, which confirms a 50 percent savings per vehicle exported. Moreover, the system has attracted some attention beyond the automotive industry, as is evidenced by the petitioner's invitation to present his system to a lumber industry conference and the interview posted at www.universallogistics.net. Moreover, it is clear from the record that the petitioner did not simply improve an existing system, but developed an entirely new all-encompassing system to handle automotive export logistics. While many reference letters derive from employers, clients and those in the chain of export who have benefited from the petitioner's system, these letters attest to the broad reach of the petitioner's widely adopted and implemented innovation.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the logistics community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.